IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Bail Appl..No. 6552 of 2007()

CC.1183/2005 of J.M.F.C.,CHALAKUDY

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PETITIONER/4TH ACCUSED

REMMY ALBI
ANCOMBIL HOUSE VALIYTHURA VALLAKADAV
THIRUVANANTHAPURAM.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6552 of 2007

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Dated this the 24th day of October, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. Cognizance was taken as early as in 2005, as can be seen from the number of the case, C.C.No. 1183 of 2005. The petitioner has been granted bail. But on the date to which the case was posted for trial, the petitioner did not appear. Obviously his counsel was not prepared to go on with the trial. The learned Magistrate has issued a warrant of arrest against the petitioner. He apprehends imminent arrest.

2. According to the petitioner he is absolutely innocent. His failure/omission to appear earlier was not wilful. He was compelled to be away in New Delhi and that is why he could not personally appear before the court. He is willing to surrender before the learned Magistrate and seek bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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